

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

LUCASYS INC.

Plaintiff,

v.

POWERPLAN, INC.,

Defendant.

Case No. 1:20-CV-2987

Judge Amy M. Totenberg

**DEFENDANT POWERPLAN, INC.’S MOTION TO DISMISS  
PURSUANT TO RULE 12(b)(6)**

Defendant PowerPlan, Inc. (“PowerPlan”), by and through undersigned counsel, hereby moves this Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), for an order dismissing Counts I, II, III, IV, V, VII, and VIII of Plaintiff Lucasys Inc.’s (“Lucasys”) Complaint, for failure to state a claim.

As shown in the attached supporting memorandum, the underlying dispute concerns PowerPlan’s lawful and legitimate attempts to protect its trade secrets from misappropriation by several former PowerPlan employees who recently formed Lucasys. Concerned it would be sued, Lucasys has run to the Courthouse, trying to portray itself as a victim, relying on vague and conclusory allegations to recast the dispute in the language of the federal antitrust law. As explained below and in the

attached memorandum, Lucasys' antitrust allegations are insufficient as a matter of law and should be dismissed

Lucasys' Georgia state law claims for interference with contract and malicious interference with business also fail as a matter of law. The Complaint makes clear that PowerPlan is not a stranger to the referenced customers, who are pre-existing customers of PowerPlan, and license proprietary PowerPlan software under agreements that require the customers to protect PowerPlan's confidential information.

More specifically, as explained in the attached supporting memorandum:

(i) Counts I and II under Section 2 of the Sherman Act, and Counts IV and V under Section 1 of the Sherman Act, fail because Lucasys does not allege any facts demonstrating that it was willing and able to enter the Utility Management Software Market, and therefore lacks standing to assert antitrust claims relating to that market;

(ii) Counts III, IV, and V under Section 1 of the Sherman Act fail because Lucasys does not allege plausible injury to competition in the Supplemental Management Services Market or Deferred Tax Solutions Market;

(iii) Counts III, IV, and V fail, to the extent they are premised on the existence of a Deferred Tax Solutions Market, because Lucasys' market

definition is insufficient as a matter of law and it has failed to allege a plausible injury to competition; and,

(iv) Counts VII and VIII under Georgia common law fail because Lucasys's Complaint makes clear that PowerPlan acted with privilege and was not a stranger to the business relationships involving joint customers of Lucasys and PowerPlan.

Accordingly, as more fully explained in the Memorandum in Support being filed with this Motion, this Court should dismiss Counts I, II, III, IV, V, VII, and VIII of the Complaint.

Respectfully submitted this 11th day of September, 2020.

Respectfully submitted,

/s/ Petrina A. McDaniel

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*Attorneys for Defendant PowerPlan, Inc.*

### **CERTIFICATE OF COMPLIANCE**

I hereby certify, pursuant to Local Rules 5.1 and 7.1D, that the foregoing Motion to Dismiss has been prepared using Times New Roman, 14 point font.

*/s/ Petrina A. McDaniel*

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Petrina A. McDaniel

*Attorney for Defendant PowerPlan, Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion to Dismiss was served on September 11, 2020 by filing it using the Court's CM/ECF system, which will send electronic notification of such filing to all counsel of record.

*/s/ Petrina A. McDaniel*

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Petrina A. McDaniel

*Attorney for Defendant PowerPlan, Inc.*